No. 80-1366

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

Supreme Court, U.S.
FILED
MAR 30 1981
ALEXANDER L. STEVAS,
CLERK

THE STATE OF CALIFORNIA,

Petitioner,

v.

RICHARD SCHUSTER, ET AL.,

Respondents.

PETITIONER'S RESPONSE TO BRIEF IN OPPOSITION

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ARGUMENT

I

THIS COURT DOES HAVE JURISDICTION TO DECIDE THE ISSUES RAISED IN THIS CASE

Respondents urge this Court cannot grant petitioner's writ of certiorari because the opinion of the California Court of Appeal

rests on state grounds as well as federal grounds. In this case, petitioner feels respondents' argument must fail.

As respondents themselves note at page seven of their Brief in Opposition, this Court has stated that where the judgment of a state court rests upon two grounds, one federal and one state, its jurisdiction fails if "the non-federal ground is independent of the federal ground and adequate to support the judgment." (Fox Film Corp. v. Muller (1935) 296 U.S. 207, 210, emphases added.) However, the Court of Appeal's decision in this case does not fit within this classification.

A nonfederal ground should not be deemed "independent" of the state ground simply because in a footnote appearing at the end of its opinion, the

Court of Appeal has stated, "our decision also rests on article I, section 2, of the California Constitution." (Schuster v. Municipal Court (1980) 109 Cal.App.3d 887, 899, fn. 3.) Nor could such a passing reference qualify as "adequate to support the judgment." Nowhere in the opinion does the Court of Appeal state, or even imply, its opinion rests independently on state grounds. Its brief and passing reference to the California Constitution in an otherwise detailed recitation and interpretation of federal authority, clearly indicates the Court of Appeal has not rested its decision independently on the California Constitution.

Recently, in California v. Riegler (Feb. 5, 1981, No. A-659) ____ U.S.L. Week ____, on application for stay, Justice Rehnquist noted in determining if a stay

should be granted this Court would inquire into whether the order sought to be stayed is predicated on federal as opposed to state grounds. He concluded the order at issue did sufficiently raise a federal question because "The opinion refers specifically to the Fourth Amendment and relies for support on federal cases and state cases addressing the federal constitutional issue."

Here, the opinion of the California Court of Appeal is squarely premised on an interpretation of Talley v. California (1960) 362 U.S. 60. The Court of Appeal itself notes that those California cases which are cited in its opinion are cases which also interpret Talley. (Schuster v. Municipal Court, supra, 109 Cal.App.3d at p. 895.) Moreover, those cases which are cited from

other jurisdictions are cases which offer interpretations of Talley. (Schuster v. Municipal Court, supra, 109 Cal.App.3d at p. 899.) In short, the California Court of Appeal, while briefly mentioning the California Constitution, clearly never intended to rest its decision independently on state law.

To accept respondents' argument would mean this Court could not review any state decision which, while raising substantial federal issues and disposing of them by relying upon interpretations of this Court's opinions, mentions in passing that its opinion would be the same under the state's Constitution.

As the California Court of Appeal clearly recognized, the issues raised in this case are of substantial federal interest. It disposed of the

issues by use of this Court's opinions and state authorities interpreting those opinions.

This Court does have jurisdiction to review the issues presented.

II

THIS CASE SHOULD BE CONSIDERED IN CONJUNCTION WITH THE FINANCIAL DISCLOSURE CASES IN WHICH THIS COURT HAS NOTED JURISDICTION

The petition for writ of certiorari was filed in this case on February 5, 1981. On February 23, 1981, this Court noted jurisdiction in a California case: Citizens Against Rent Control v. City of Berkeley, 80-737.[1] The case raises questions concerning whether campaign limitation laws in California

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1. On the same day, this Court noted jurisdiction in two other cases which involve First Amendment rights as they relate to campaign disclosure: Federal Election Commission v. Americans For A Change, 80-1067; Common Cause v. Schmitt, 80-847.

violate First Amendment rights of speech and association.

In its petition for rehearing before the California Court of Appeal (exh. A, pp. 3-4)[2/], and its petition for hearing in the California Supreme Court (exh. B, pp. 24-25), petitioner cited the case of Citizens Against Rent Control v. City of Berkeley (1980) 27 Cal.3d 819, for the proposition that if financial disclosure laws are to be effective, the state must be permitted to require disclosure of those responsible for distributing campaign literature. As was noted in the petition for hearing filed in this case in the

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2. For the court's convenience, petitioner has included the pertinent parts of its petition for rehearing in California Court of Appeal and petition for hearing in the California Supreme Court as exhibits A and B, respectively. The petitions in their entirety are contained in the record below as 4 Civ. 22008.

California Supreme Court, if section 29410 is declared unconstitutional, an individual or corporation, who has reached its legal contribution limit, can then, through its organization or a "shield," make a further contribution by anonymously financing the printing of literature for or against a candidate or proposition. Moreover, the person may say what he wishes with impunity.

Indeed, with a cloak of total anonymity, the financial disclosure laws and policies underlying them can be totally ignored, thus totally emasculated. There would be no way of knowing who is financially responsible for any given literature "campaign," and thus, it would become very difficult to enforce expenditure limitations. (See exh. B, p. 25.)

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Petitioner has asserted (petn. for writ of cert., p. 12) and continues to assert, that the full implementation and enforcement of financial disclosure laws depend upon personal disclosure statutes such as Elections Code section 29410.

Respectfully submitted,

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E X H I B I T "A"

Second, the requirements of section 29410 apply only to electrically or mechanically printed materials which are characterized by their quality of mass distribution (e.g., pamphlets, bills, letters).

Finally, as appellant has noted in its opening brief, the provisions of section 29410 protect only declared candidates and current elections. (AOB 28-31.) This Court's concern over past elections (Schuster, et al. v. Imperial County Municipal Court, et al., supra (Aug. 28, 1980, 4 Civ. 22008) ____ Cal.App.3d ____, slip opn., p. 10) is needless.

In summary, only "campaign literature" is governed by section 29410. Such literature exists where (1) an individual or organization who exercises distribution control over material, (2) relating to a declared candidate or current election, (3) mechanically or electrically reproduces that material for public consumption.

The scope of "campaign literature" covered by section 29410 is definable. It is not overbroad. A rehearing should be granted to properly construe the statute.

II Exh. A

IF SECTION 29410 IS DECLARED UNCONSTITUTIONAL, FINANCIAL DISCLOSURE AND LIMITATION LAWS THROUGHOUT CALIFORNIA WILL BE EMASCULATED

Financial limitation and disclosure laws such as those recently held constitutional by the California Supreme

Court in Citizens Against Rent Control v. City of Berkeley (Aug. 7, 1980, S.F. 24124) ____ Cal.3d ____, exist to prevent fraud and corruption in the election process. (Id., slip opn., pp. 14-19.)[1/] If section 29410 is declared unconstitutional, an individual or corporation who reaches the legal spending limit can then make a further contribution by launching an anonymous literature campaign by itself or through a "shield." There would be no way of knowing who is responsible for the campaign, and thus, there would be no way of effectively enforcing expenditure limitations.

A rehearing should be granted so the important social policies underlying the financial disclosure laws are not emasculated.

III

A REHEARING SHOULD BE GRANTED SO THAT A FULL CONSTITUTIONAL BALANCING TEST CAN BE APPLIED

As appellant pointed out in its opening brief (AOB 11-12, 26), those who would challenge a statutory disclosure requirement must present a record which demonstrates in fact or experience a reasonable probability the disclosure will cause some type of harm to the individuals or association

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1. Among local provisions directly affected are division 29 of the San Diego Municipal Code (spending limits for city candidates and ballot measures), and chapter 9, division 2, title 3 of San Diego County Code of Regulatory Ordinances (spending limitations on county candidates).

E X H I B I T "B"

In conclusion, only "campaign literature" is regulated by section 29410. Such literature exists where (1) an individual (or organization) who exercises the distribution control over material, (2) relating to a declared candidate or current election, (3) electrically or mechanically reproduces that material for mass consumption.

Section 29410 clearly gives a person of ordinary intelligence fair notice as to what type of conduct is forbidden. Since the general class of offenses to which the statute is directed is plainly within its terms, section 29410 should not be struck down as unconstitutionally overbroad, even though some marginal case might arouse doubts. (United States v. Harriss (1954) 347 U.S. 612, 617-618, 626.) This is so especially since, through construction, this Court can and should give constitutionally valid definitions to its terms, and limit its application to a constitutional scope. (Id.)

A hearing should be granted so that section 29410 can be properly construed.

II Exh. B

IF SECTION 29410 IS DECLARED UNCONSTITUTIONAL, THE FINANCIAL DISCLOSURE AND LIMITATION LAWS THROUGHOUT THIS STATE WILL BE EMASCULATED AND FREEDOM OF EXPRESSION WILL BE CURTAILED

In declaring section 29410 unconstitutional, the Court of Appeal permits and invites complete avoidance of

existing financial limitation laws, such as those recently held necessary and constitutional by this Court in Citizens Against Rent Control v. City of Berkeley (1980) 27 Cal.3d 819.

Financial disclosure and limitation laws, which are consistent with California's Fair Political Practices Act,[7] limit the amount of money which can be contributed in support of or opposition to candidates and ballot measures. Their purpose is to eliminate corruption and foster fair and honest elections.

If section 29410 is declared unconstitutional, an individual or corporation, who has reached its legal contribution limit, can then, through its organization or a "shield," make a further contribution by anonymously financing the printing of literature for or against a candidate or proposition. Moreover, the person may say what he wishes with impunity.

Indeed, with a cloak of total anonymity, the financial disclosure laws and policies underlying them (see id.) can be totally ignored, thus totally emasculated. There would be no way of knowing who is financially responsible for any given literature "campaign," and thus, there would be no way of enforcing expenditure limitations.

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7. California Government Code section 81000 et seq.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

AFFIDAVIT OF SERVICE BY MAIL

Clifford E. Reed, Jr., being duly sworn, deposes and says: That affiant is over the age of 18 years, and not a party to the within action; that affiant's place of employment and business address is 110 West "A" Street, Suite 600, San Diego, California 92101; that on the 26 day of March, 19 81, affiant enclosed one true copy of the within

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(State v. Schuster, No. 80-1366)

in an envelope for each of the persons named below, addressed to each of them at the address set out immediately below each respective name, sealed said envelope, and deposited the same in the United States Mail at the City of San Diego, County of San Diego, State of California, with postage thereon fully prepaid; that there is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the said place of mailing and each of the places so addressed.

That all parties required to be served have been served as shown below:

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Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.

Subscribed and sworn to before me
this 26th day of March,
19 81.

SHERI HATTEN
NOTARY PUBLIC - CALIFORNIA
COUNTY OF SAN DIEGO
My Commission expires Nov. 7, 1981

NOTARY PUBLIC in and for the County of
San Diego, State of California.

SD CL-3 (11/78)